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2007 MAR -8 AM 11:24

HAWAII LABOR  
RELATIONS BOARD

Attorneys for Complainant NELSON B. BEFITEL,  
Director of Labor and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	) CASE NO. OSH 2006-21
	) (Inspection No. 309459907)
DIRECTOR, DEPARTMENT OF LABOR	)
AND INDUSTRIAL RELATIONS,	) STIPULATION AND SETTLEMENT
	) AGREEMENT; EXHIBIT A; APPROVAL
Complainant,	) AND ORDER
	)
vs.	)
	)
SAFEWAY, INC.,	)
	)
Respondent.	)

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Nelson B. Befitel, Director of Labor and Industrial Relations ("Director") and Respondent SAFEWAY, INC. ("Respondent") having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about June 27, 2006 through June 28, 2006, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 111-J E Puainako Street, Hilo, Hawaii 96720.

As a consequence of said inspection, the Director issued a Citation and Notification of Penalty on August 14, 2006 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$4,500.00. *See* Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 111-J E Puainako Street, Hilo, Hawaii 96720.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent agrees that it has or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH no later than February 28, 2007; failure to timely do so may result in additional penalties or follow up inspections.
5. The Citation is amended as follows:
  - a. Citation 1, Item 1, HAR § 12-202-1(e)(1) is affirmed.
  - b. Citation 1, Items 2a & 2b, 29 CFR 1910.132(d)(1) & 29 CFR 1910.132(d)(2) [Refer to chapter 12-64.1, HAR] are affirmed.
  - c. Citation 1, Items 3a & 3b, 29 CFR 1910.1200(g)(8) & 29 CFR

1910.1200(h) [Refer to chapter 12-203.1, HAR] are deleted.

6. The Director reduces the aggregate penalty from \$4,500.00 to \$3,000.00 which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

7. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

8. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

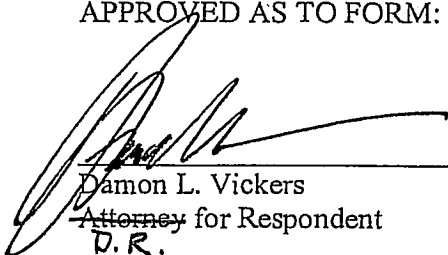
9. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

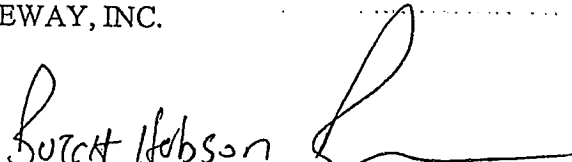
10. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

DATED: Honolulu, Hawaii, March 8, 2007.

APPROVED AS TO FORM:


SAFEWAY, INC.

  
Damon L. Vickers  
Attorney for Respondent  
D.R.

By:   
Its SAFETY & ENV. AFFAIRS MGR

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND  
INDUSTRIAL RELATIONS

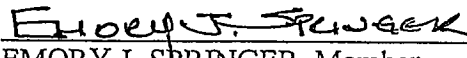
  
ROBYN M. KUWABE  
Deputy Attorney General  
Attorney for Director of Labor and  
Industrial Relations, State of Hawaii

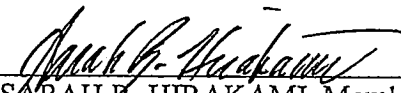
  
NELSON B. BEFITELE

APPROVED AND SO ORDERED BY  
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 237

  
BRIAN K. NAKAMURA, Chair

  
EMORY J. SPRINGER, Member

  
SARAH R. HIRAKAMI, Member

State of Hawaii  
Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division  
830 PUNCHBOWL STREET, ROOM 425  
Honolulu, HI 96813  
Phone: (808) 586-9090 FAX: (808) 586-9104

NORCAL DIVISION

AUG 16 2006

RISK MANAGEMENT



Certified Number: 7003 3110 0003 5610 5292

## Citation and Notification of Penalty

**To:**

Safeway Inc  
and its successors  
680 Iwilei Road, Suite 590  
Honolulu, HI 96817

Inspection Number: 309459907 (Richard Lee)

Inspection Date(s): 06/27/2006 - 06/28/2006

Issuance Date: 08/14/2006

OSHSO ID: U3486

Optional Report No.: 06-24

Inspection Type: Complaint

Scope of Inspection: Partial Inspection

**Inspection Site:**

111- J E Puainako St  
Hilo, HI 96720

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

**Informal Conference** - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

**Employers' Right to Contest** - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

**Penalty Payment** - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action** - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

**Employer Rights and Responsibilities** - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

**Employees' Right to Contest** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

**Inspection Activity Data** - you should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at [WWW.OSHA.GOV](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.



## NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 08/14/2006. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on \_\_\_\_\_ at \_\_\_\_\_. Employees and/or representatives of employees have a right to attend an informal conference.



# STATE OF HAWAII

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division

Inspection Number: 309459907  
Inspection Dates: 06/27/2006 - 06/28/2006



830 Punchbowl Street, Room 425  
Honolulu, HI 96813

Issuance Date: 08/14/2006

## Citation and Notification of Penalty

Company Name: Safeway Inc  
Inspection Site: 111- J E Puainako St, Hilo, HI 96720

Citation 1 Item 1 Type of Violation: **Serious**

HAR. §12-202-1(e)(1) was violated because:

The employer did not measure, monitor, and record the employee exposure to hazardous chemicals contained in Behr paint.

§12-202-1(e)(1) states "All employers shall measure, monitor, and record employee exposure to toxic materials or harmful physical agents. The measurement shall determine if any employee may be exposed to concentrations of the toxic materials or harmful physical agents at or above the permissible exposure limit. The determination shall be made each time there is a change in production, process, or control measures which could result in an increase in concentrations of these materials or agents. A written record of the determination shall be made and shall contain at least: (1) Any information, observations, or calculations that may indicate employee exposure to toxic or potentially toxic materials or harmful physical agents; (2) Any measurements taken; (3) Any employee complaints of symptoms that may be attributable to exposure to toxic or potentially toxic materials or harmful physical agents; (4) Date of determination, work being performed at the time, location within work site, name, and social security number of each employee considered; and (5) Any other information that may be relevant to employee exposure."

Location: Establishment

Date By Which Violation Must be Abated:  
Penalty:

09/05/2006  
\$1,500.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

# STATE OF HAWAII

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division

Inspection Number: 309459907  
Inspection Dates: 06/27/2006 - 06/28/2006



830 Punchbowl Street, Room 425  
Honolulu, HI 96813

Issuance Date: 08/14/2006

## Citation and Notification of Penalty

Company Name: Safeway Inc  
Inspection Site: 111- J E Puainako St, Hilo, HI 96720

The alleged violations below (2a & 2b) have been grouped because they involve similar or related hazards that may increase the potential for illness or injury resulting from an accident.

### Citation 1 Item 2a Type of Violation: **Serious**

29 CFR 1910.132(d)(1) [Refer to chapter 12-64.1, HAR] was violated because:

The employer did not assess the workplace to determine if hazards are present or likely to be present during painting that would require the use of personal protective equipment.

29 CFR 1910.132(d)(1) states "The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall: (i) Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment; (ii) Communicate selection decisions to each affected employee; and, (iii) Select PPE that properly fits each affected employee."

Location: Establishment

Date By Which Violation Must be Abated:  
Penalty:

09/05/2006  
\$1,500.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**STATE OF HAWAII**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division

Inspection Number: 309459907

Inspection Dates: 06/27/2006 - 06/28/2006



830 Punchbowl Street, Room 425  
Honolulu, HI 96813

Issuance Date: 08/14/2006

**Citation and Notification of Penalty**

Company Name: Safeway Inc  
Inspection Site: 111- J E Puainako St, Hilo, HI 96720

**Citation 1 Item 2b** Type of Violation: **Serious**

29 CFR 1910.132(d)(2) [Refer to chapter 12-64.1, HAR] was violated because:

The employer did not verify that the required workplace hazards assessment has been performed through a written certification.

29 CFR 1910.132(d)(2) states "The employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment."

Location: Establishment

**Date By Which Violation Must be Abated:**

**09/05/2006**

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

# STATE OF HAWAII

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division

Inspection Number: 309459907  
Inspection Dates: 06/27/2006 - 06/28/2006



830 Punchbowl Street, Room 425  
Honolulu, HI 96813

Issuance Date: 08/14/2006

## Citation and Notification of Penalty

Company Name: Safeway Inc  
Inspection Site: 111- J E Puainako St, Hilo, HI 96720

The alleged violations below (3a & 3b) have been grouped because they involve similar or related hazards that may increase the potential for illness or injury resulting from an accident.

### Citation 1 Item 3a Type of Violation: **Serious**

29 CFR 1910.1200(g)(8) [Refer to chapter 12-203.1, HAR] was violated because:

The employer did not make available copies of the material safety data sheet for employees who are using Behr paint. The lack of this information about the hazardous chemicals contained in the paint exposes the employees assigned to paint different areas of the store to potential health effects such as respiratory tract, eye, and skin irritation.

29 CFR 1910.1200(g)(8) states "The employer shall maintain in the workplace copies of the required material safety data sheets for each hazardous chemical, and shall ensure that they are readily accessible during each work shift to employees when they are in their work area(s). (Electronic access, microfiche, and other alternatives to maintaining paper copies of the material safety data sheets are permitted as long as no barriers to immediate employee access in each workplace are created by such options.)"

Location: Establishment

Date By Which Violation Must be Abated:  
Penalty:

09/05/2006  
\$1,500.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

# STATE OF HAWAII

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division

Inspection Number: 309459907  
Inspection Dates: 06/27/2006 - 06/28/2006



830 Punchbowl Street, Room 425  
Honolulu, HI 96813

Issuance Date: 08/14/2006

## Citation and Notification of Penalty

Company Name: Safeway Inc  
Inspection Site: 111- J E Puainako St, Hilo, HI 96720

### Citation 1 Item 3b Type of Violation: **Serious**

29 CFR 1910.1200(h) [Refer to chapter 12-203.1, HAR] was violated because:

The employer did not provide general merchandise clerks who were told to paint different areas of the store with effective information and training on the physical and health hazards associated with the use of paint. The lack of information and training on the hazardous use of paint exposes these clerks to potential health effects such as, eye, skin, and respiratory tract irritation.

29 CFR 1910.1200(h) states "Employers shall provide employees with effective information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new physical or health hazard the employees have not previously been trained about is introduced into their work area. Information and training may be designed to cover categories of hazards (e.g., flammability, carcinogenicity) or specific chemicals. Chemical-specific information must always be available through labels and material safety data sheets."

Location: Establishment

Date By Which Violation Must be Abated:

09/05/2006

*Nelson B. Befitel*  
NELSON B. BEFITELE  
DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii  
Department of Labor and Industrial Relations  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
Honolulu, HI 96813

### SUMMARY OF PENALTIES

Company Name: Safeway Inc  
Inspection Site: 111- J E Puainako St  
Hilo, HI 96720  
Issuance Date: 08/14/2006

Summary of Penalties for Inspection Number 309459907

Citation 01, Serious	=	\$4,500.00
<b>TOTAL PENALTIES</b>	<b>=</b>	<b>\$4,500.00</b>

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.